

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

No. CR 11-0811 EMC

Plaintiff,

v.

MEDCHEM CORPORATION, *et al.*,

Defendants.

**ORDER GRANTING MOTION TO  
DISMISS MEDCHEM WITHOUT  
PREJUDICE AND DENYING MOTION  
TO VACATE TRIAL DATE**

**(Docket Nos. 132, 133, 134)**

The government has filed a motion for leave to dismiss the indictment in this case as to Defendant Medchem without prejudice. Docket Nos. 132, 134. Defendants object, arguing that the dismissal should be with prejudice.

The Federal Rules of Criminal Procedure provide that “[t]he government may, with leave of court, dismiss an indictment, information, or complaint.” Fed. R. Crim. P. 48(a). Though this rule does require a prosecutor to obtain leave of court to dismiss the indictment without prejudice, the Ninth Circuit has held that this does not change the fact that the decision about whether to prosecute is generally within the government’s discretion.

If the district court finds that the prosecutor is acting in good faith in making its Rule 48(a) motion, it should grant the motion; conversely, Rule 48(a) empowers the district court to exercise its discretion in denying the motion when it specifically determines that the government is operating in bad faith. . . . Rule 48(a) allows the government, provided it is not acting in bad faith, to dismiss an indictment without prejudice and later to reindict based on the same or similar charges. As the district judge properly found, when the government requests a Rule 48(a) dismissal in good faith, the district court is duty bound to honor the request.

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1 *United States v. Hayden*, 860 F.2d 1483, 1487-88 (9th Cir. 1988); *see also United States v.*  
2 *Gonzalez*, 58 F.3d 459, 461 (9th Cir. 1995) (“the district court’s discretion to deny [a prosecutor’s  
3 request to dismiss under Rule 48(a)] is limited”). As prosecutors have broad discretion in the  
4 enforcement of the law, “the presumption of regularity supports their prosecutorial decisions.”  
5 *United States v. Garcia-Valenzuela*, 232 F.3d 1003, 1007 (9th Cir. 2000); *United States v. Salinas*,  
6 693 F.2d 348, 352 (5th Cir. 1982) (“this Court begins with the presumption that the prosecutor acted  
7 in good faith in moving to dismiss the first indictment”).

8 A court may, on the other hand, deny the prosecution’s request to dismiss “if that motion is  
9 prompted by considerations clearly contrary to the public interest, or if the dismissal would  
10 contribute to prosecutorial harassment by subjecting a defendant to charging, dismissing, and  
11 recharging. A fundamental consideration in assessing the propriety of a prosecutor’s dismissal  
12 motion is whether the motion is made in good faith.” *United States v. Wallace*, 848 F.2d 1464, 1468  
13 (9th Cir. 1988) (internal citations and quotation marks omitted). Courts have found that a finding of  
14 bad faith may be justified where there is evidence that government’s request for the continuance was  
15 based solely on the desire to gain a tactical advantage through delaying the trial, or where the  
16 dismissal and re-indictment was an attempt to circumvent rulings with which the government was  
17 dissatisfied. *Id.* (finding of bad faith would have been justified had the defendant provided  
18 evidence to support her allegations that “the Government’s dismissal motion was in fact improperly  
19 motivated by its desire to gain a tactical advantage by selecting a more favorable time to reindict her  
20 and that its proffered reason for the dismissal was a sham”); *Hayden*, 860 F.2d at 1488-89 (“Of  
21 course, had the district judge concluded and specifically found that the government utilized the Rule  
22 48(a) motion as a pretext to bypass his denial of the continuance, a clear act of bad faith, he could  
23 have reversed his earlier Rule 48(a) ruling.”); *Salinas*, 693 F.2d at 352-53 (finding of bad faith  
24 where prosecutor dismissed case after jury selection and re-indicted six days later in order to avoid  
25 jury panel he believed to be unfavorable).

26 Here, Defendant makes no specific allegations that the prosecution’s request to dismiss  
27 Medchem without prejudice is being made in bad faith, but argues only that the government should  
28 be required to provide a reason for seeking the dismissal beyond mere exercise of prosecutorial

1 discretion. Docket No. 135. As the cases interpreting Rule 48(a) recognize, however, prosecutors  
2 have broad discretion in determining when to pursue or dismiss a case, and courts must grant a  
3 motion to dismiss the indictment absent a specific determination that the government is acting in bad  
4 faith. *See Hayden*, 860 F.2d at 1487-88. As Defendants have pointed to no facts that would form  
5 the basis for such a finding here, the government's motion to dismiss Medchem without prejudice is  
6 **GRANTED**.

7 Defendants have also filed a motion for a continuance of the trial based on certain late  
8 disclosures of documents, and the government's recent request for large numbers of stipulations.<sup>1</sup>  
9 The Court finds that these disclosures and requests for stipulations are not so burdensome as to  
10 justify a continuance, and therefore **DENIES** Defendants' motion for a continuance.

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12 This order disposes of Docket Nos. 132, 133, and 134.

13 IT IS SO ORDERED.

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15 Dated: June 21, 2013

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18 EDWARD M. CHEN  
19 United States District Judge  
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26 <sup>1</sup>Defendants also argued that they should be granted a continuance in light of the fact that the  
27 government had not, as of the time Defendants filed their motion, filed its brief explaining the basis  
28 for the request to dismiss Medchem without prejudice. The government, however, filed this brief  
shortly after Defendants filed their motion for a continuance, and as Defendants filed a response to  
the government's brief immediately thereafter, the Court finds that Defendants have experienced no  
prejudice.